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Civil Procedures. 8/16/05

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

U.S. DIST. COURT EAST DIST. WISC.	
FILED	
AUG 15 2005	
AT	O'CLOCK
SOFRON B. NEDILSKY	
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TERRANCE J. SHAW,

Plaintiff,

v.

Case No. 04-C-979

WARDEN JUDY P. SMITH
and MATTHEW FRANK,

Defendants.

ORDER

Before the court is Plaintiff's Motion to Compel Compliance with His Second Discovery Request and to Stay All Further Proceedings. For the reasons stated herein, the plaintiff's motion to compel will be granted and his motion to stay will be denied.

On December 16, 2004, the court issued a scheduling order setting deadlines for the completion of discovery and for the filing of dispositive motions at March 16, 2005, and April 18, 2005, respectively. On April 8, 2005, the court granted the plaintiff's motion for an extension of time to complete discovery. The discovery deadline date was extended until May 16, 2005, and the deadline for filing dispositive motions was set at June 17, 2005. On June 16, 2005, the court granted, per margin order, the defendants' motion for extension of time until July 17, 2005, to file a motion for summary judgment. On July 18, 2005, defendants filed their motion for summary judgment.

On July 22, 2005, the plaintiff filed his motion to compel compliance with his second discovery request. The plaintiff asserts that on April 29, 2005, he filed his Second Set of

Interrogatories. (Pl.'s Mot. ¶ 4, Ex. B.) After not receiving any response from the defendants, on June 27, 2005, the plaintiff contacted counsel for the defendants by letter, notifying him that he had failed to timely respond to the plaintiff's second discovery request or file any objections thereto within thirty days. (Pl.'s Mot. ¶ 5, Ex. C.) The defendants have not responded. According to the plaintiff, he "is unable to defend against, or prosecute any motions for summary judgment, due to a lack of information that defendants have in their possession and plaintiff cannot obtain by any other source." (Pl.'s Mot. ¶ 9.) The defendants have not filed a response to the plaintiff's motion to compel.

The plaintiff states that he filed his Second Set of Interrogatories on April 16, 2005. At that time, the deadline for the completion of discovery was May 16, 2005. Thus, the plaintiff's request was untimely. *See Civil L.R. 26.2 (E.D. Wis.)* ("Completion of discovery means that discovery . . . must be scheduled to allow depositions to be completed, interrogatories and requests for admissions to be answered, and documents to be produced prior to the deadline and in accordance with the provisions of the Federal Rules of Civil Procedure").

However, the deadline for filing a summary judgment motion was subsequently extended upon request by the defendants, and their motion was ultimately filed one day late. In addition, the court has reviewed the plaintiff's Second Set of Interrogatories, which is attached to his motion to compel, and finds that they are relevant to this case. *See Fed. R. Civ. P. 26(b)(1)*.

Based on the foregoing, the court finds that the defendants should respond to the plaintiff's Second Set of Interrogatories. Therefore, the plaintiff's motion to compel discovery will be granted. The defendants should file their responses to the plaintiff's Second Set of Interrogatories on or before

September 12, 2005. The plaintiff's response to the defendants' motion for summary judgment will be due by October 17, 2005.

The plaintiff also requests that all further proceedings in this action are stayed pending resolution of his motion. It is not necessary to stay these proceedings and accordingly, the plaintiff's motion to stay will be denied.

ORDER

IT IS THEREFORE ORDERED that the plaintiff's motion to compel (Docket #29) be and hereby is **GRANTED**;

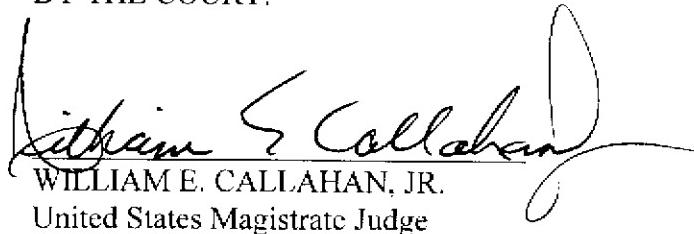
IT IS FURTHER ORDERED that the defendants file a response to the plaintiff's Second Set of Interrogatories on or before **September 12, 2005**;

IT IS FURTHER ORDERED that the plaintiff file a response to the defendants' motion for summary judgment on or before **October 17, 2005**.

IT IS FURTHER ORDERED that the plaintiff's motion to stay (Docket #29) be and hereby is **DENIED**.

Dated at Milwaukee, Wisconsin this 15th day of August, 2005.

BY THE COURT:



WILLIAM E. CALLAHAN, JR.
United States Magistrate Judge